

FILED 06 AUG 30 12:07 PM -ORE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DAVID WAYNE PLUMB,

Plaintiff,

Civil No. 06-1099-TC

v.

FINDINGS AND  
RECOMMENDATION

STATE OF OREGON,

Defendant.

COFFIN, Magistrate Judge.

Plaintiff filed a Request for writ of injunction seeking to stay his criminal prosecution for "Inmate in possession of weapon."

By ORDER (#3) entered August 14, 2006, plaintiff was allowed 30 days to either pay the filing fee in this case or to file an application to proceed in forma pauperis. Plaintiff was further advised that "equity concerns and principles of comity require federal courts to refrain from

enjoining state criminal prosecutions. Younger v. Harris, 401 U.S. 37 (1991)," and that the "complaint before the court is subject to *sua sponte* dismissal."

Plaintiff has now filed an application to proceed in forma pauperis (#5) - which is allowed. Plaintiff also filed a "Motion to stay proceedings in this case" (#4). Plaintiff's motion states: "If this court decides to dismiss this complaint ... Plaintiff requests this court to take action [proceed with complaint] when Marion County prosecution is complete."

Plaintiff's Motion for stay (#4) is construed as a motion for voluntary dismissal without prejudice, and should be allowed with the provision that plaintiff may re-file this case or any other appropriate action after the conclusion of his state court proceedings.

This proceeding should be dismissed.

DATED this 30<sup>th</sup> day of August, 2006.

  
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Thomas M. Coffin  
United States Magistrate Judge